

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK**

**NEW YORK STATE RESTAURANT
ASSOCIATION,**

Plaintiff,

-against-

**NEW YORK CITY BOARD OF HEALTH,
NEW YORK CITY DEPARTMENT OF HEALTH
AND MENTAL HYGIENE, and Thomas R. Frieden,
In His Official Capacity as Commissioner
Of the New York State Department of Health
And Mental Hygiene,**

Defendants.

No. 07 CIV 5710 (RJH)

**MOTION OF THE RUDD CENTER FOR LEAVE
TO FILE BRIEF AS AMICUS CURIA**

Brian L. Bromberg moves for leave to file the accompanying brief on behalf of Jennifer L. Pomeranz and Kelly D. Brownell of the Rudd Center for Food Policy and Obesity at Yale University, and Robert Post of Yale Law School (“Rudd Center”), as amicus curiae, urging the court to deny plaintiff’s motion for declaratory relief and a preliminary injunction.

The Rudd Center is a non-profit organization whose mission is to improve the world’s diet, prevent obesity, and reduce weight stigma by establishing connections between science and public policy, developing targeted research, encouraging frank dialogue among key constituents, and expressing a dedicated commitment to real change. The Rudd Center assesses, critiques, and strives to improve practices and policies related to nutrition and obesity so as to inform and empower the public, to promote objective, science-based approaches to policy, and to maximize the impact on public health. Robert Post, J.D., Ph.D., is the David Boies Professor of Law at

Yale Law School. He focuses his teaching and writing on constitutional law and is a specialist in First Amendment jurisprudence and constitutional law. New York City's adoption of Amendment §81.50 Calorie Labeling to Article 81 of the New York City Health Code furthers the Rudd Center's goals.

New York adopted Amendment §81.50 Calorie Labeling to Article 81 of the New York City Health Code on December 5, 2006. Through this regulation, New York mandates that food service establishments "post on menu boards and menus the calorie content values" that have been made publicly available on or after March 1, 2007, "for each menu item next to the listing of each menu item." *See Notice of Adoption of an Amendment (§81.50) to Article 81 of the New York City Health Code*, at 4. The purpose of this regulation is to "allow individuals to make more informed choices that can decrease their risk for the negative health effects of overweight and obesity associated with excessive calorie intake." *Id.* at 1. Based on the best scientific evidence available, public health expert recommendations, and substantial research, the Rudd Center supports and has been supporting menu labeling legislations in cities and states across the country.

The Rudd Center's amicus curia brief focuses on the First Amendment challenges made by plaintiff in its memorandum of law in support of its motion. Compelled disclosure requirements, like Health Code §81.50 are an important and effective tool to better inform consumers and prevent them from being confused about the caloric composition of the foods and beverages they purchase and consume. By giving consumers the tools to allow them to make better informed choices, citizens of New York City will be able to make healthier choices which can in turn help them to prevent or reduce obesity and related diseases.

Amicus seeks leave to file this nineteen page brief urging this Court to deny plaintiff's motion for declaratory relief and a preliminary injunction. Jennifer Pomeranz sought and received consent from both parties to file this amicus brief. Mark Muschenheim, Assistant Corporation Counsel for the New York City defendants, and Nancy Milburn of Arnold & Porter LLP, for the plaintiff, consented to this submission.

CONCLUSION

The motion for leave to file a brief as amicus curiae should be granted.

Dated: July 9, 2007

Respectfully submitted,

Attorney for Amicus Curiae:

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Certificate of Service

I, Brian Bromberg, an attorney, hereby certify that on July 9, 2007, the foregoing document was filed with the Clerk of the Court and served in accordance with the Federal Rules of Civil Procedure, and/or the Southern District's Local Rules, and/or the Southern District's Rules on Electronic Service upon the following parties and participants:

Nancy Gordon Milburn, Esq.

Kent A. Yalowitz, Esq.

Peter L. Zimroth, Esq.

Louise Althea Moed, Esq.

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Dated: New York, New York
July 9, 2007

/s/ Brian L. Bromberg

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